IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

RP.No. 563 of 2007(E)

AGAINST THE JUDGMENT IN WA.47/2006 Dated 08/12/2006
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REVIEW PETITIONERS/RESPONDENTS 1 & 2 IN W.A.
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1. THOMAS M ALIAS, S/O.ALIAS,
   MUNDAYIL, PERINGOLE KARA, KOLENCHERY,
   AIKKARANAD NORTH VILLAGE, KUNNATHUNAD TALUK.

2. JOGI GEORGE, S/O.C.M.GEORGE,
   CHOLATTU HOUSE, VADAYAMPADI P.O.,
   PUTHENCRUZ, AIKKARANAD NORTH VILLAGE.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENTS: APPELLANTS & RESPONDENTS 3 TO 6 IN W.A.
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1. STATE TO KERALA, REPRESENTED BY THE
   DISTRICT COLLECTOR AND DISTRICT MAGISTRATE,
   ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
   PUTHENCRUZ.

3. THE SUB DIVISIONAL MAGISTRATE
   MUVATTUPUZHA.

4. M.I.FRANCIS, SUB DIVISIONAL MAGISTRATE,
   MUVATTUPUZHA.

5. P.M.GRORGE, AGED 70 YEARS,
   S/O.LATE MATHULLA ELOOR, PONNIKKUZHIYIL,
   KOLENCHERY, ERNAKULAM DIST.

6. K.S.VARGHESE, KAVANAMCHUVATTIL,
   KINGINIMATTAM, KINGINIMATTAM P.O.,
   KOLENCHERY, ERNAKULAM DISTRICT.

R1 to R4 BY GOVERNMENT PLEADER SRI C.M.KAMMAPPU
R5 & R6 SRI.P.R.VENKATESH

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & K. HEMA, JJ.

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R.P. NO. 563/2007 IN W,A. 47/2006

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DATED THIS, THE 9TH DAY OF AUGUST, 2007.

J U D G M E N T

Raman, J.

Petitioners are respondents 1 and 2 in W.A. 47/2006. The writ appeal was filed by Respondents 5 and 6 herein challenging the judgment rendered in W.P.(C) 20938/2005 dated 9.12.2005. Review petitioners herein were the writ petitioners. The writ petition was allowed directing the Sub Divisional Magistrate, Muvattupuzha to remove the lock put by him on the doors of the Church and allow Fr. M.V. Abraham to take possession of the Church. The authorities concerned were given liberty to pass appropriate fresh orders in case the then situation warrants. The writ petition was seeking relief against an order passed by the Sub Divisional Magistrate under Section 144 of the Code of Criminal Procedure .

2. As could be seen from the judgment in the writ appeal, the appeal was dismissed as withdrawn. The appellants sought fifteen days time to enable them to file a civil suit and with that end in view, they sought directions to continue status quo for a period of two weeks so that the key will be continued in the custody of the Sub Divisional Magistrate who will,

in the event of institution of the suit , deposit the same before the civil court. After obtaining such a direction from this Court, the appellant did not move the civil court for a long time. The result is that the review petitioners/writ petitioners were denied the fruits of the order passed in the writ petition, though the writ appeal filed by the respondents herein was dismissed as withdrawn. It was in these circumstances that the review petition was filed seeking clarification and appropriate orders. After repeated adjournments, the respondents today filed a counter affidavit stating that they have already instituted a suit before the District Court, Ernakulam. The registry was directed to get the correctness of the statement so made as to whether any such suit was filed. The registry has informed that information has been received from the District Court that a suit as O.S. 43/2007 has been filed. Even though in the counter affidavit it is stated that the suit is filed as directede by this Court, as rightly pointed out by the learned counsel for the petitioners, no direction was issued by this court in the writ appeal rather status quo was ordered to be maintained for a period of two weeks for enabling the respondents to institute the suit. Though we are not satisifed in the conduct of the respondents in not filing the suit, after taking advantage of the order passed by this Court in the writ appeal, since at least by now, the suit has been filed, we do not want to pass any orders which will

adversely affect the right of the parties especially regarding their right to be adjudicated in the civil suit.

In the circumstances, we direct the Sub Divisional Magistrate to deposit the key with the District Court, Ernakulam, in O.S. 43/2007 and it will be open to the District Court to pass appropriate interim orders or otherwise after hearing both sides, within two weeks.

The review petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

K. HEMA,
(JUDGE)

knc/-